

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 15,079

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying Medicaid coverage for a power tilt and reclining system for his wheelchair. The issue is whether such a modification is medically required because of the patient's condition.

FINDINGS OF FACT

1. The petitioner is a sixty-eight-year-old man who has been unable to independently ambulate for several years due to ankyloid spondylitis, a condition in which his back joints are fused resulting in minimal mobility. He has lived in his daughter's home and is cared for by his wife, who has recently recovered from cancer, and his daughter, who also cares for several small children in the home.
2. Until one year ago, the petitioner spent most of his time in a reclining lounger in which he could change positions. At mealtimes, his wife and daughter moved him into a wheelchair so he could eat at the table. However, he could not stay in the wheelchair for more than thirty minutes because intense pain caused him to need to change positions. At that time he was returned to the lounger to obtain relief.
3. Approximately a year ago, the petitioner, who is a Medicaid recipient, applied for coverage of a power wheelchair with special modifications which would automatically lift both the seat and back of the wheelchair so he could change positions when he needed to, as he did in the lounger. He was granted the power wheelchair but denied the modification for changing positions. He asked for reconsideration on modification of the wheelchair and submitted new supporting documentation. The reconsideration took some months because the Department was planning to have a consulting physical therapist evaluate the petitioner. In the meantime the petitioner obtained the power wheelchair with the power modifications although the latter has never been paid for. He has now been using the modified wheelchair for over one year.
4. The original documentation submitted by the petitioner was an evaluation from a physical therapist at the Fletcher Allen Health Care who specializes in powered wheelchairs and a prescription prepared by her and his physician. In addition to providing extensive technical findings regarding his limited range of motion and deteriorated skin on his buttocks, the physical therapist concluded:

Now totally dependent for all care secondary to severe joint contractures and pain. Spends most of day and night in lounge wheelchair because he can continually change his position by reclining or inclining the chair. However, family does make transfers out of lounge to wheelchair throughout the day so he can participate in ADL's [activities of daily living], eat at table, etc. Patient has only a one hour sitting tolerance in wheelchair because he cannot change positions and pain becomes unbearable. Ideally, needs power recline system on a chair. Patient is skeptical about being able to propel a power chair, although I feel he has adequate motor function. Also, he will be moving into an adapted, open floor plan home this summer.

Based on this evaluation and recommendation, the

patient's physician prescribed the power wheelchair with a

"Tarsys tilt/recline system" in order to offer him relief from ankylosing spondylitis and decubitus ulcers. He expected the system to help the petitioner through independent propulsion and independent repositioning for greater than one hour of sitting tolerance and to heal and prevent future skin breakdown.

5. On March 6, 1997, the Department denied the petitioner's request for the power seating system and notified him that his request "did not meet the criteria for coverage." The notice did not spell out the criteria for coverage. However, an internal memorandum prepared by the Medicaid chief which was submitted by the Department at the hearing indicated that the denial was because "power seating systems are generally covered for persons that require frequent and immediate position changes due to complications of respiratory condition. This request is documenting relief of pain and stiffness. From my perspective it is to relieve caregiver responsibility."

6. The petitioner was not able to attend his hearing but was represented by his daughter who was accompanied by her father's visiting nurse, physical therapist, social worker and the owner of the medical store which provided the wheelchair. The testimony of all of these witnesses under oath was uncontroverted and found to be entirely credible. The facts found in the subsequent paragraphs are based upon that testimony.

7. The petitioner has a degenerative condition which results from shrinkage of his spinal cord which causes pinched nerves and decreased sensation to his joints and extremities. He is unable to move his neck, shoulders, raise his arms beyond his face, bend at his hips or use his legs for ambulation. His ability to eat and eliminate food are also affected. He needs to change his position frequently and at will in order to eliminate pain, avoid bedsores, and to clear secretions from his throat.

8. Prior to the receipt of the specially equipped wheelchair the petitioner spent the vast majority of his day in the lounge, with brief periods in his wheelchair required for eating and toileting. Taking him from the lounge requires the use of a gait belt and two persons for lifting which was accomplished from five to six times per day. After the petitioner had been in the wheelchair for 30-45 minutes the pain of sitting in one position became unbearable and he had to be taken back to the lounge. There was no way that the petitioner himself (who was described as a large man) or any other persons could reposition him in the wheelchair to get him any relief. Without the ability to immediately reposition himself, he remained in pain until he could be removed to his lounge. He was spending as much as twenty-two hours in a day in a lounge. This long period in the lounge was not only isolating and depressing for the petitioner but caused him to develop continuously bleeding and oozing ulcers on his buttocks, the

treatment of which was a serious problem for his home health nurse to deal with. There was also concern that the petitioner, who before this illness struck him was employed and very independent, felt powerless and was regressing in his ability to carry out his daily activities such as eating, toileting himself and socializing because he could only leave his lounge for very brief periods. In addition, the petitioner was developing severe colds and pneumonia in the winter, aggravated by his inability to properly clear secretions from his lungs.

9. During the last year that he has been using the power lift and recliner feature in his electric wheelchair, he has been able to increase his time in the wheelchair to two to three hours at a time. While he still needs assistance in getting into the wheelchair he can now stay in it for much longer periods because he can reposition himself immediately to remove pain by pushing buttons on his wheelchair which cause him to tilt and recline at once. The longer time periods in the wheelchair have enabled him to serve his own needs better because he is able to move about his own home and even go outside in his garden. The ulcers on his buttocks have dramatically improved because the new chair is even better at positioning him than the recliner and allows air to circulate to that region of his body.

10. Based on the above evidence, it is concluded that the power tilt and recline system is a medical necessity for the petitioner and not merely a convenience item.

### ORDER

The decision of the Department denying the petitioner's request for Medicaid coverage of the power modification to his wheelchair is reversed.

### REASONS

Under the Medicaid regulations, wheelchairs and their modifications are covered as durable medical equipment under the following conditions:

Wheelchair; when the patient's condition is such that the alternative would be chair or bed confinement. Special features and/or power operation must be referred to the Medicaid Division for special approval since coverage extends only to modifications which are medically required because of the patient's condition.

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The Department made a decision to deny the petitioner payment for the lift system under this regulation telling him only that he did not meet "criteria for coverage" but without explaining what those criteria might be. The internal "criteria" adopted by the Department appear to limit such power modifications only to persons with respiratory problems who need immediate positional changes. Such a definition is far too narrow in that it precludes a determination as to whether modifications might be medically necessary in any other circumstance. The Department represented that it purchased a consultation from a physical therapist in this matter but did not put any kind of report from that consultant into evidence to support its decision at the hearing.

The considerable evidence offered by the petitioner in this matter shows that at the time of his application for this modification, he was virtually confined to a lounging chair even though he had a powered wheelchair. No matter how many times he was moved in and out of a wheelchair during the

day, he could not stay in a wheelchair for any significant period of time unless it was modified to accommodate his medical condition. In addition, his inability to use the wheelchair contributed to depression, further deterioration of his abilities and serious buttock ulcers. These facts are more than sufficient to demonstrate that the wheelchair was medically required because of the petitioner's condition and coverage for its purchase should have been granted under the regulation above.

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